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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940 41

No. ~~134~~ 5

MAJOR RAYMOND LISENBA, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED JUNE 8, 1940.

CERTIORARI GRANTED OCTOBER 28, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 134

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vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 18, 1940.

—1514

[fol. 1] [File endorsement omitted]

[fol. 2] **IN SUPREME COURT OF CALIFORNIA**

L. A. Crim. No. —

IN THE MATTER OF THE APPLICATION OF MAJOR RAYMOND LISENBA FOR A WRIT OF HABEAS CORPUS

PETITION FOR A WRIT OF HABEAS CORPUS—Filed October 31, 1939

To the Honorable William M. Waite, Chief Justice of the Supreme Court of the State of California, and to the Honorable Associate Justices Thereof:

The Petition of Major Raymond Lisenba respectfully shows:

I

That Major Raymond Lisenba is imprisoned, detained, confined and restricted of his liberty by Sheriff Eugene Biscailus at the County Jail in the County of Los Angeles, State of California, and is under a judgment to suffer the death penalty.

II

That on the 21st day of April, 1936, petitioner was lodged in the Los Angeles County Jail in the City of Los Angeles by Jack C. Southard and Charles Griffen, members of the staff of investigators of the office of the District Attorney of said county, who then and there claimed to and did act as agents of the State of California, but that at said time petitioner was not charged with any offense and was not booked for investigation;

[fol. 3] That on the 6th day of May, 1936, an indictment was returned in the Superior Court of said county by the grand jury of the County of Los Angeles, by which indictment petitioner was charged with the crime of murder, a felony;

That thereafter and on said 6th day of May, petitioner was duly arraigned in the Superior Court under said indictment;

That on the 11th day of May, 1936, petitioner was again duly arraigned on said charge and entered a plea of not guilty thereto;

That on the 22nd day of June, 1936, the defendant, represented by counsel, was placed on trial in Department 43 of said Superior Court, the Honorable Charles W. Fricke, Judge of said court presiding; that a jury was duly selected and impaneled; evidence was adduced on behalf of both the People and petitioner; arguments of counsel were made; the Court instructed the jury; and the jury, after deliberation, returned a verdict finding petitioner guilty of murder in the first degree;

That thereafter petitioner moved the Court for a new trial, which said motion was on the 10th day of September, 1936, denied;

That thereafter and on said 10th day of September, 1936, the Court pronounced judgment and sentenced petitioner to suffer the penalty of death;

That petitioner duly appealed from said judgment to the [fol. 4] Supreme Court of the State of California, and that on the 21st day of March, 1939, said Supreme Court of the State of California rendered its decision and judgment, by which judgment said judgment of the Superior Court was affirmed;

That thereafter petitioner duly moved the said Supreme Court to grant a rehearing of said appeal, and that on April 30th, 1939, said Supreme Court ordered that said appeal be reheard;

That thereafter and on the 5th day of October, 1939, said Supreme Court of the State of California rendered its judgment upon said appeal and ordered that said judgment of the Superior Court be affirmed.

III

That said imprisonment, detention, confinement and restriction, and judgment to take his life on the said charge of murder are illegal, and the illegality consists in this, to-wit:

1. That the jurisdiction of the Court and officers of the court was exceeded, in that the defendant was and is being held in violation of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States, and the said provision contained in Article I, Section 13 of the Constitution of the State of California, as will hereinafter appear in more particularity;

(a) That on the 19th day of April, 1936, petitioner was [fol. 5] forcibly taken from his home by Jack C. Southard and Charles Griffen and, without warrant or any process of law, and against petitioner's will and consent, was held and imprisoned in another house in said city; that for a period of thirteen days said Southard and Griffen, who were members of the staff of investigators of the Los Angeles County District Attorney's office, and other officers of that staff and other law enforcement officers, all officers of the State of California, and at least three deputies of said District Attorney's office, almost incessantly questioned petitioner, day and night, concerning the death of Mary Emma James, petitioner's deceased wife, and certain offenses which said officers and deputies accused petitioner with having committed; that during said period said officers, especially Southard and Griffen, repeatedly beat and otherwise assaulted petitioner, accused petitioner of having killed his said wife and of having tortured her and of other offenses punishable by life imprisonment or death, and threatened petitioner with further beatings unless he would admit his guilt of said act and offenses;

That during the first four days of said period petitioner was not permitted to sleep and did not sleep at all, and that during the remainder of said period petitioner was not permitted to sleep except during brief intervals between said questionings and was given little food, and that during the first seven days of said period, petitioner was not permitted to communicate with any person other than said officers [fol. 6] and said deputies and, in particular, was not permitted to see or consult with any attorney although petitioner at the beginning of said period and repeatedly thereafter, asked and begged of said Southard and Grifen and of other officers and of said deputies to be permitted to see an attorney; that at no time during said period had any criminal charge been placed against said petitioner by information, indictment or complaint; that during all of said questioning plaintiff denied that he had committed any of said acts or offenses with which he was so accused, as aforesaid, and petitioner avers that by reason of said treatment to which he was subjected, as above set forth, he was at all times physically weak and rendered mentally unfit, and that at the end of said period he was completely exhausted physically and mentally and in a state of complete discouragement and hopelessness and mental collapse.

(b) That Major Raymond Lisenba was unlawfully and forcibly taken from his, petitioner's, home; imprisoned and isolated in a private building for three nights and days before being lodged in any jail by law enforcement investigators of the District Attorney's office of said County, where he was held incommunicado, questioned continuously by officers, severely beaten and bruised, and was repeatedly falsely accused of having tortured and killed his wife and of other monstrous crimes which are punishable by life imprisonment or death, and threatened with further violence [fol. 7] to his person if he did not confess guilt of such accusations, all in violation of the due process provisions of the Fourteenth Amendment to the Constitution of the United States.

(c) That he was forcibly and against his will and consent taken from said private building to the Los Angeles County Jail by said officers and there lodged and held practically incommunicado for eleven days, during which period he was almost incessantly questioned by said officers and by the deputies of the District Attorney of Los Angeles County; was on several occasions beaten by said officers; was repeatedly further accused of torturing and killing his wife, and of committing other crimes punishable by life imprisonment or death, and threatened with further personal violence if he continued to deny and would not admit that he was guilty of said charges; that during said eleven days he was repeatedly and forcibly taken from said jail by said officers to the office of the said District Attorney and there questioned and accused for many hours by said District Attorney, Burón Fitts, and Eugene Williams, Assistant District Attorney, and deputies of said District Attorney of said Los Angeles County, and that all of said acts and conduct of said officers and said District Attorney and his assistants and deputies were against the will and consent and protests of petitioner; that all of said detentions, movings from place to place and acts and conduct were in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States which guarantees [fol. 8] to every person the equal protection of the laws of the land.

(d) That the repeated taking of petitioner from jail without his attorney and against his consent to the office of the District Attorney and other places and, without food and

without rest, after prolonged questioning, thereafter extorting a purported confession, which was used in the trial against petitioner, was in violation of due process of law and petitioner's right to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(e) That after your petitioner had been lodged in jail for four days he secured the services of Attorney S. J. Silverman, a duly licensed attorney-at-law, who was the counsel of his choice; that thereafter, on or about May 2nd, 1936, without his consent and against his will and without the knowledge or consent of his attorney, your petitioner was forcefully removed from the jail by Officer Southard and other officers, without any court order or other processes of law authorizing his removal from the jail, and was taken by said Southard to the office of the District Attorney of Los Angeles County.

(f) That after petitioner had secured the services of said S. J. Silverman, said Silverman was only permitted to consult with petitioner on one occasion. That without the knowledge or consent or permission of said Attorney Silver-
[fol. 9] man, and in violation of Section 1600 of the Penal Code of the State of California, regarding the removal of prisoners from jail, you petitioner was removed from the jail to the District Attorney's office and, without any notice to his said attorney and without his attorney being present, was subjected to prolonged interrogation by the District Attorney and Deputy District Attorneys and by officers of the State of California acting with the said prosecutors. That such procedure was and is in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and of petitioner's right to the equal protection of the laws guaranteed by said amendment.

(g) Petitioner was not, upon being taken into custody of said officers, taken to the nearest magistrate in the county, pursuant to Section 349 of the Penal Code, or to any magistrate, and no complaint or indictment was returned against him from April 21st, 1936, when he was first lodged in jail, or until May 6th, 1936, when an indictment was returned against him. That from April 19th, 1936, until the time of the return of the indictment he was never left alone and

was almost constantly, from day to day, being removed from his jail cell and was subjected, without his consent and without any attorney being present, to repeated questioning. That this questioning was done not only by said officers of the law, but by the members of the District Attorney's staff, including the deputies who prosecuted the [fol. 10] case; that he was subjected to questioning without any knowledge or consent of his said attorney Silverman, and without said Silverman being present. That he was removed from the jail without any notice, knowledge or consent of the said attorney Silverman on or about May 2nd, 1936, at about 9:00 o'clock in the morning, taken to the District Attorney's office from the jail, and there subjected to questioning all day, without any food or rest, and without his attorney being present or notified; that said questioning continued until the next morning, when, in order to terminate the same, petitioner answered questions asked by the said officers and officials, all duly authorized agents of the State of California in charge of the prosecution of said case, as they wished him to answer said questions, and made a statement referred to herein as an alleged confession.

(h) That upon the trial of said cause said alleged confession by petitioner, which was a statement of alleged facts from which, if true, it appeared that petitioner confessed to having committed the offense with which he was charged in said indictment and admitted the commission of other criminal acts and offenses, was received in evidence over and against the objections of the petitioner that said statement was not shown to have been freely and voluntarily given and made, but was shown to have been given and made under duress, threats, force, fraud and coercion; that said statement was in fact given and made by petitioner under threats, duress and coercion and fraud, and not otherwise, and its [fol. 11] admission into evidence was a violation of the substantial rights of the petitioner to due process and the equal protection of the law, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(i) That third-degree, brutal methods were used upon petitioner by said officers and deputies of said District Attorney to coerce and extort a purported confession from petitioner and that the use in evidence of such alleged confession so obtained by such means and methods as hereinbefore set forth make void the entire trial under the due

process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States.

(j) That prolonged questioning without sleep and under tortuous mental ordeal, similar to that employed in the dark ages, and in the torture chamber, were used upon the defendant, and statements thus extorted and coerced were permitted in evidence in the trial, as above set forth; that the use of the alleged confession in evidence obtained by these methods was in violation of the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States.

(k) That alleged evidence of another purported offense in another state was presented in the trial of this case, without any complaint, indictment, information or judgment thereon and without any jurisdiction of the California Court of the subject-matter therein, and that said use of said testi- [fol. 12] mony placed the defendant upon trial in California before a California jury on such purported offense, and is in violation of due process of law, guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(l) That your petitioner was at no time ever accused by indictment, information, complaint or otherwise in the State of Colorado of the murder of his former wife, Winona P. James, who died in Colorado as the result of an automobile accident; that at the time of her death her father was at all times present and the official cause of her death which was entered at that time showed that her death was accidental and since that date no charge has been lodged against your petitioner in the State of Colorado. That without any charge or accusation, the State of California produced witnesses from the State of Colorado to testify in 1936 as to alleged occurrences in Colorado on September 21st, 1932, at Glen Cove, Colorado. That witnesses called were J. D. Rogers, Superintendent of Pikes Peak Highway; Miss Grace Yarnell, a cousin of petitioner's former wife; Gerald Rogers, who worked in a grocery store in Manitou Springs, Colorado; Dr. George B. Gilmore; Mrs. Irene F. Snyder; John A. McKelvey; G. A. Fries, connected with a Colorado Insurance Company; and Bayard Judd, from Kansas; and that the testimony of said witnesses was entirely insufficient to prove that petitioner was in any way connected with the death of said Winona P. James, but was sufficient to suggest

[fol. 13] a conjecture or suspicion that he might have had some such connection and to prejudice the jury against petitioner.

That considerable time and much testimony during the trial was consumed with the trial of this issue of the alleged death of petitioner's former wife by other than natural means; that your petitioner never had any notice that he would be required to meet this charge and he had no opportunity to defend against it, for the reason that the processes of the State of California do not extend to the State of Colorado. That this testimony was introduced over the strenuous objection of your petitioner. That all of said testimony testified to in said trial and which is included in the transcript on appeal and is part of the records and files in the case, is made a part hereof by reference.

That the introduction of said evidence without any formal accusation and without any process of the Court to bring and produce witnesses from the State and vicinity in which it was claimed said other offense was committed, and in violation of the right to be tried on a criminal charge in the county in which the crime is alleged to have been committed only, was and is a violation of the guarantee of due process of law and the right to equal protection of the law contained in the Fourteenth Amendment to the Constitution of the United States.

(m) That the principal evidence against the defendant was that of an alleged accomplice named Charles H. Hope; [fol. 14] that since the trial the said Charles H. Hope has made affidavits and filed the same in the Superior Court of Los Angeles County and has declared in said affidavits that his said testimony was obtained by deceit, fraud, collusion and coercion and was entirely false; that he was impelled only by force and fear, threats and promises to give said testimony, and that all these facts, including the falsity of his statements, were known to the prosecution and participated in by them; that said testimony thus obtained and the conviction based thereon makes the trial had herein a mere pretense and sham and a violation of the due process of law and right to the equal protection of the laws clauses and provisions of the Fourteenth Amendment of the Constitution of the United States, by which provisions said rights are guaranteed petitioner.

(n) That during the trial of said cause the People caused two live, hissing rattlesnakes to be brought into the court room by investigators of said District Attorney's office, and to be exhibited to the jury, and said snakes were so brought in and exhibited, and did continually hiss and rattle while in said court room; that the actions, noises and presence of said snakes caused jurors to shrink, and they did shrink from said snakes and facially and otherwise expressed horror and fright; that neither of said snakes had been or were legally identified or connected in any way with the death of petitioner's said wife and that said procedure was so unwarranted and unprecedented, and so calculated to in-
[fol. 15] flame and prejudice the jury against petitioner and to distract their attention and minds from the issues on trial that thereby said trial became and was a mere pretense, mockery and sham, which violated the fundamental guarantee of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, as well as the same provisions contained in Article I, Section 13 of the Constitution of California.

2. That by reason of the acts, omissions and use of evidence in violation of the Fourteenth Amendment to the Constitution of the United States which took place before and after the imprisonment of the said petitioner upon the said charge of murder, as above set forth the petitioner has become entitled to his discharge on the said charge of murder.

3. That the petitioner has been committed upon a criminal charge without reasonable or probable cause, in violation of the Fourteenth Amendment to the Constitution of the United States.

In furtherance of said petition and as further grounds thereof, your petitioner respectfully shows:

That on or about April 19th, 1936, your petitioner was seized by officers of the law at about 9:00 o'clock in the morning and, without being incarcerated or placed in any jail, or taken before any magistrate, or allowed to call or
[fol. 16] confer with any attorney at law, either of his own choosing or otherwise, kidnaped from his said home and forcibly carried away to a private residence on La Salle Avenue, next door to the home where petitioner

lived, where your petitioner was subjected to a terrific beating by Jack Southard and Charles Griffen, acting as the agents of the State of California and under color of authority, and that your petitioner was ruptured during the night of April 21st, 1936, by reason of such beating then and there administered by said officers, and that thirteen or fourteen officers of the law, all agents of the State of California, continuously, and in relays, questioned your petitioner for approximately sixty (60) hours. That during this time your petitioner was continuously, unlawfully seized and held, and not placed in any proper or legal place of confinement, in violation of Sections 145 and 649 of the Penal Code of California, and Article I, Section 19 of the Constitution of California, and the Fourth and Fourteenth Amendments to the Constitution of the United States and the same provisions contained and considered as due process of law in the State of California.

That during the entire period of time when your petitioner was being beaten and struck and interrogated, he was not permitted to have and did not have the services of any attorney or counsel at law; that your petitioner was beaten about the ears and body; that he was not allowed to sleep, but was constantly interrupted by officers of [fol. 17] the law until he finally became so exhausted that he could not keep his eyes open; that said course of conduct was cruel and inhuman and in violation of the Fourteenth Amendment of the Constitution of the United States; that he was ill from the beating which had been administered and he was sore and bruised about the body and exhausted mentally and physically;

That under the instructions of Officer J. S. Southard, an agent of the State of California, he was not left alone, even in jail, night or day, but was incessantly questioned from the moment when he was lodged in said jail until when, on the 2nd day of May, 1936, he was again removed from the jail against his will and without his consent and taken to the District Attorney's office and was there further questioned in relays by the State agents and members of the District Attorney's office and their said staff from early morning through the day, without being given anything to eat, until at 1:55 A. M., May 3rd, 1936, when, by reason of the constant and continuous torture and mental and physical violence to which he had been subjected, said al-

leged confession was extorted from him, as hereinbefore set forth;

That no attorney was present or permitted to be present during the said last mentioned interrogation; that your affiant was then represented by counsel to the then knowledge of said District Attorney and said other questioners, but his counsel was not notified; that thereafter the trial of the said cause commenced on June 22nd, 1936, and a jury [fol. 18] was regularly impaneled to try the cause; that the trial continued to and including July 24th, 1936;

That during the said trial of said action, over the objections of the petitioner and in violation of his rights guaranteed by the Fourteenth Amendment of the United States, the statements extorted from your petitioner under said brutal third-degree methods, which were then shown by the evidence to have been given under duress and not freely and voluntarily, were permitted to be placed before the jury, over strenuous objections of petitioner;

That on or about July 15th, 1936, two live, hissing rattlesnakes were brought into the court room and shown to the jury, as above set forth; that the top of the box containing the rattlesnakes was removed; that the court room at once became a bedlam of excitement; that the snakes were in a box which was carried down the aisle of the court room and that spectators rose from their seats and jurors immediately shrank and cowered in the jury box; that, although the snakes had not yet been placed in evidence the jurors had expressions of horror, fear and hatred in their faces, and moved uneasily in their seats in the jury box; that the snakes were placed on the counsel table, less than two feet away from the jury; that your petitioner is informed and believes that the effect of bringing said rattlesnakes into the court room was to so greatly excite their passions, prejudices and emotions that it caused said jury to believe petitioner guilty of the charge against him even before the evidence was all in; that such information is based upon [fol. 19] newspaper articles, quoting members of the jury:

The "Los Angeles Examiner" of July 25th, 1936, reads as follows:

"Harold W. Hart, one of said jurors, said:

" 'James had been convicted in my own mind ever since they brought the rattlesnakes into the court room, showed

them to us and then introduced witnesses who told us that James had actually stuck his wife's foot into a box containing one of those serpents and had watched it strike her.'

"Mrs. Ollie Sype said:

" 'The sight of the rattlesnakes which were exhibited as the weapons by which Robert James did his wife to death stunned me. It was the most shocking experience of my life.'

"Harvey M. Gray said:

" 'I think that jurors should be governed by the preponderance of evidence in the doctrine of reasonable doubt. So far as I am concerned, the preponderance of the evidence was all to the prosecution'."

That thereafter, and during the course of the trial, evidence was introduced against your affiant, purporting to show that in the State of Colorado, at Colorado Springs, in September, 1932, petitioner purportedly killed Winona F. James, his then wife. That your petitioner was never accused of said crime in any information or indictment, nor did the State of California ever have any information or [fol. 20] indictment upon which to base said accusation; that petitioner was never given any notice of said last-named charge nor any opportunity to meet the first essentials of due process of law and was not informed that said charge would be made and attempted to be proved until the case was on trial and the People introduced the purported evidence relating to said other separate and distinct offense, of which the State had no jurisdiction. That the said purported evidence of the said other alleged offense upon which he was placed on trial consumed a great portion of the trial record; that it was introduced over petitioner's objection and without his consent and related to matters outside the jurisdiction of the Court, and the argument to the jury on said evidence and false issue consumed a large portion of the time in the discussion of the case, all in violation of the rights of your petitioner, guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

That thereafter one Charles H. Hope was called as a witness; that he entered a plea of guilty to the charge against

himself and your petitioner. That the sentence against the said Hope was delayed until after the trial of your petitioner and that immediately thereafter he was given a life sentence. That the said Hope testified against your petitioner, as appears more specifically in the reporter's transcript on file in the Supreme Court of the State of California, which is made a part of this petition by reference.

That thereafter, on or about the 25th day of June, 1939, [fol. 21] the said Charles H. Hope filed with the Clerk of the Superior Court of the State of California, Los Angeles County, two (2) affidavits, made a part herein by reference as though here fully set forth, in both of which he repudiated said statements and declared that through the collusion of State prosecuting officers he was prevailed upon to give and did give false testimony against your petitioner and that said State officials knew the said testimony to be false, and that they did so with corrupt motive and purpose and of supplying defects in the evidence. That a fraud was perpetuated upon the Court by reason of his testimony and that there was nothing to his snake story, and that the same was a creation of the District Attorney's staff.

That the said Charles H. Hope so testified both out of fear and out of promises made to him; that each and every one of the above proceedings set forth were and are in violation of the constitutional rights guaranteed to your petitioner under the Fourteenth Amendment to the Constitution of the United States, and that the proceedings had, as above set forth, vitiated the verdict and judgment rendered in said cause and case on a charge of murder, and that therefore your petitioner is held illegally on said charge of murder and the entire proceedings were and are void and without warrant or authority of law.

Petitioner avers that the laws and the Constitution of the State of California prohibit the introduction into evi- [fol. 22] dence of the confession of one accused of crime, unless it first is shown to have been freely and voluntarily made; said laws prohibit and penalize brutal treatment of persons in the custody of peace officers by said peace officers;

Said laws require that an officer, upon making an arrest without a warrant shall, without unnecessary delay, take the arrested person before the nearest and most accessible magistrate; that there was no reason why said officers should

not have taken petitioner before a magistrate forthwith upon his first having been taken into the custody of said Southard and Griffen, as aforesaid;

Said laws and Constitution provide that a person accused of crime shall have the right to the benefit of counsel at all stages of the criminal proceeding;

Said laws require that when a person who is accused of crime has counsel proper notice and opportunity to be present shall be given such counsel at all stages of such criminal proceedings at which the accused is required to be present;

Said laws prohibit and penalize the kidnaping of any person, whether by a peace officer or by any other individual; and that each and all of said laws have been and are universally recognized and enforced by the courts of the State of California, and that all persons within the State of California are universally given the protection of said laws, and of each of them, by said courts and by other officers and agents of said state, except, when as in the [fol. 23] instant case, peace officers and agents of said state, upon rare occasions, by reason of violent prejudice and passion, violate said Constitution and laws and refuse to give some person accused of crime the protection thereof.

That the said officers and other agents of the State herein named have denied to petitioner the protection of each and all of the laws and constitutional guarantees above specified, as hereinabove set forth.

That all constitutional provisions, laws and judicial decisions of the State of California are incorporated in this petition by reference and made a part hereof, as though fully set forth herein, and petitioner refers in particular to the following sections of the Constitution and of the Penal Code of the State of California, and incorporates each of said sections herein by reference as though fully quoted and set forth in this petition:

Article I, Sections 5, 11, 13 and 19 of the Constitution of California;

Sections 145, 146, 147, 149, 207, 208, 821, 824, 849, 859, 1597 and 1600 of the Penal Code of said State.

That no other application for a Writ of Habeas Corpus has been made by or on behalf of petitioner for the reason that this entire cause is now in the Supreme Court of the

State of California on a Petition for Rehearing. That this Court has before it the entire records, files and exhibits in [fol. 24] the said case, and that each and every part of the testimony of all the witnesses, exhibits, files, records and affidavits presented on the trial of said case are made a part of this petition by reference, as though herein fully set forth.

That the Constitution of California confers original jurisdiction on the Supreme Court of California to issue Writs of Habeas Corpus. (Article VI, Sec. 4, Constitution of California.)

Wherefore, your petitioner prays that a Writ of Habeas Corpus may be granted, directed to the said Sheriff, Eugene Biscailuz, commanding him to have the body of said Major Raymond Lisenba before said Court at a time and place to be specified, to do and receive what shall then and there be considered by said Court, concerning Major Raymond Lisenba, together with the time and cause of his detention and said writ; and that he may be released from confinement under said judgment of murder.

Major Raymond Lisenba, Petitioner. Morris Lavine, Attorney for Petitioner.

[fol. 25] POINTS AND AUTHORITIES

Fourteenth Amendment to the Constitution of the United States; and Article I, Section 13 of the Constitution of the State of California.

Convictions of murder resting upon confessions shown to have been extorted by officers of the State by torture of the accused are void under the due process clause of the Fourteenth Amendment to the Constitution of the United States, and vitiate the verdict.

Brown v. Mississippi, 297 U. S. 278.

To deprive a human being of sleep is a form of torture not less severe than physical violence.

Kiang Sun Wan v. U. S., 266 U. S. 1; 69 L. Ed. 131.

A confession so obtained vitiates the verdict.

Rounds v. State, 106 S. W. (2d) 212;
People v. Dye, 119 Cal. App. 262.

A conviction obtained by perjured testimony is void under the due process clause under the Fourteenth Amendment to the Constitution of the United States.

Mooney v. Holohan, 294 U. S. 103.

[fol. 26] Where falsity of perjured testimony upon which conviction is obtained is discovered after the conviction, as well as where the testimony was known to be perjured when presented, the State must afford corrective judicial process under the Fourteenth Amendment to the Constitution of the United States.

Jones v. Commonwealth of Ky., 97 Fed. (2d) 335.
Mooney v. Holohan, 294 U. S. 103.

The inhibition contained in the Fourteenth Amendment has exclusive reference to State action and means that no officer or agent by whom its powers are exerted shall deny to any person within its jurisdiction the equal protection of the laws.

Ex parte Virginia, 100 U. S. 339.

Said guaranty was aimed at hostile discrimination, oppression and inequality.

Truax v. Corrigan, 257 U. S. 312.

In such cases the Writ of Habeas Corpus will lie to determine the validity of the conviction.

Mooney v. Holohan, 294 U. S. 103.
Jones v. Commonwealth of Ky., 97 Fed. (2d) 333.

The State may not hurry an accused to conviction under [fol. 27] mob domination where the whole proceeding is but a mask without supplying corrective process.

Moore v. Dempsey, 261 U. S. 86, 91.

The bringing in of rattlesnakes to the court room substituted fear domination similar to that of a mob and made the whole proceedings but a mask and pretense of a trial.

[fol. 28] *Duly sworn to by Major Raymond Lisenba. Jurat omitted in printing.*

[fol. 29] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

L. A. Crim. No. —

In the Matter of the Application of MAJOR RAYMOND LISENBA for a Writ of Habeas Corpus

Let Writ issue returnable before the said Supreme Court in the State Building at Los Angeles, California, on the — day of —, 1939, at 10:00 o'clock A. M.

Dated: — —, —.

—— ——, Chief Justice.

[fol. 30] Received copy of the within Petition this — day of October, 1939.

Attorney General Earl Warren, by —— ——, Deputy.
District Attorney Buron Fitts, by —— ——, Clerk.

[fols. 31-36] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS—Filed November 9, 1939

By the Court

The petition for a writ of habeas corpus is denied, without prejudice.

Dated: November 9, 1939.

Waste, Chief Justice.

[File endorsement omitted.]

[fol. 37] [File endorsement omitted]

[fol. 38] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed January 18, 1940

Aggrieved by the final decision of the Supreme Court of the State of California rendered on November 9th, 1939,

denying your petitioner an application for a writ of habeas corpus, appellant Major Raymond Lisenba (Robert S. James) hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order permitting the said appellant for leave to proceed in forma pauperis, and that said order, in lieu of a bond, act as a supersedeas.

[fol. 39] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed January 18, 1940

The said appellant Major Raymond Lisenba assigns the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California in its opinion, decision, determination and judgment of the case of the People of the State of California v. this appellant erred in holding that the said Major Raymond Lisenba was not denied due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, in having live, hissing rattlesnakes brought into the court room during the trial of the said case, and the said Supreme Court erred in its opinion, decision, determination and judgment that the said bringing of rattlesnakes into the court room during the trial of the said case, by agents of the State of California, and exhibiting them less than two feet from the jury, did not and does not violate due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 40] II

The Supreme Court of the State of California in its opinion, decision, determination and judgment of the case of the People of the State of California v. this appellant erred in holding that the right of Major Raymond Lisenba to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States was not violated when live, hissing rattlesnakes were brought into and kept in the court room during the trial of said case and

were exhibited to the jury within less than two feet from where the jurors sat.

III

The Supreme Court of the State of California, in its opinion, decision, determination and judgment of the case of the People of the State of California v. this appellant, erred in holding that the arrest of the appellant on the 19th day of April, 1936, and the forcible taking of him from his home by agents and officers of the State of California without warrant or any process of law, and against appellant's will and consent, and that the incessant and uninterrupted questioning of appellant for three days and nights by agents and officers of the State of California, during which he was repeatedly accused of numerous acts of a highly criminal nature, including the torture and killing of his wife, Mary [fol. 41] Emma James, and the almost incessant questioning of appellant for a period of nine days immediately thereafter, during which the accusations above mentioned were continually repeated, all of said questioning having relation to said accusations, and immediately preceding and leading to statements made by appellant in the form of a purported confession of the truth of said accusations, and which said questionings were several times interrupted by said officers brutally beating and otherwise assaulting and seriously injuring appellant's person,—said questionings and beatings having occurred while appellant was being held and imprisoned by said officers, without warrant or any process of law, for the first three nights and days without any sleep, in a private house, and for the remaining nine days in a public jail and with only brief intervals of sleep between said questionings, all without appellant's consent, and the final taking of appellant to the office of the District Attorney, against appellant's will and without any lawful or other process, and being there further questioned by the District Attorney and his deputies for approximately two hours, without food or sleep and without benefit of appellant's counsel, and the extorting from appellant through said acts, questionings and procedure of statements in the form of and purporting to be a confession of guilt, which statements were introduced in evidence during the trial of this case against appellant's objections, and which statements appellant made [fol. 42] only to terminate the ordeal to which he had been

subjected for thirteen days, does not violate due process in this prosecution guaranteed by the Fourteenth Amendment to the constitution of the United States.

IV

The Supreme Court of the State of California in its opinion, decision, determination and judgment of the case of the People of the State of California v. this appellant erred in holding that appellant was not denied the right to the equal protection of the laws when a purported confession was admitted in evidence, where it was shown that appellant had been, for a period of thirteen days, threatened, assaulted, deprived of sleep or substantial food, and almost continuously accused of numerous crimes, and questioned concerning them by investigators of the District Attorney, the District Attorney and his deputies, when, during the first three days of said period appellant was held incommunicado in a private house, was beaten by official investigators of the District Attorney, was given no food, and was continuously questioned by relays of official investigators and Deputy District Attorneys, as well as by the District Attorney; when, during the last nine days of said period appellant was lodged in jail, was beaten repeatedly and otherwise assaulted, was given little food and allowed to sleep only for brief periods between questionings, was almost continuously questioned and threatened by official in- [fol. 43] vestigators and other law enforcement officers, was allowed to see counsel but once, and held otherwise incommunicado for the first eleven days of said period, and when, at the end of said thirteen days appellant was in a state of fright and physical collapse and was mentally and physically exhausted, he was taken by official investigators of the District Attorney's office to the District Attorney's office and there questioned and threatened by the District Attorney and his deputies for several hours, following which the alleged confession was purportedly taken by a deputy sheriff from appellant,—although appellant had continuously, during said period of thirteen days, maintained his innocence, and when the purported confession was taken by a deputy sheriff from appellant only as the result of said ordeal of thirteen days duration and of appellant's fright, and weakened physical and mental condition, and was thereafter repudiated and has been made to no other person since then.

V

The Supreme Court of the State of California in its opinion, decision, determination and judgment of the case of the People of the State of California v. this appellant erred in holding that the arrest of appellant without warrant or preferment of any charge; the forcible holding of appellant incommunicado in a private house by peace officers, and the failure of said officers to take appellant before a magistrate, as provided by the laws of the State of California, immedi- [fol. 44] ately upon his arrest, and thereafter placing and for nine days holding appellant in jail without the preferment of a criminal charge against him; the refusal of permission to appellant to consult or see counsel for eleven days after such arrest and incarceration; the frequent beating and the continual questioning and threatening of appellant for thirteen days; the taking of appellant, several times, from jail, against his will, to other places for questioning; the deprivation of appellant of sleep and substantial food for thirteen days; the refusal to call appellant's known counsel when appellant was finally questioned and coerced, and admission of such purported confession into evidence against appellant,—was not a violation of appellant's right to the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

VI

The Supreme Court of the State of California erred in its opinion, decision, determinaation and judgment in the case of the People of the State of California v. this appellant, in holding that this appellant was no denied due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States when he was placed upon trial in California on the charge of murder of his wife Mary Emma James, and thereafter, during the trial of said case, without any indictment, information or judgment, the defendant was tried on evidence from the State of Colorado [fol. 45] regarding the death of his former wife, Winona P. James, and which evidence was offered to show that appellant had committed criminal offenses in Colorado, of which he never was accused and of which appellant had no notice and could not have the use of legal process to secure any witnesses to rebut or refute the testimony so given, and

that such trial in California on evidence from Colorado, was not in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

VII

The Supreme Court of the State of California erred in its opinion, decision, determination and judgment in the case of the People of the State of California v. this appellant, in holding that the right of this appellant to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States was not violated when he was placed upon trial in California on the charge of murder of his wife Mary Emma James, in California, and thereafter, during the trial of said case, without any indictment, information or judgment, the defendant was tried on evidence from the State of Colorado regarding the death of his former wife, Winona P. James, and which evidence was offered to show that appellant had committed criminal offenses in Colorado, of which he never was accused and of which appellant had no notice and could not have the use of legal process to secure any witnesses [fol. 46] to rebut or refute the testimony so given.

VIII

The Supreme Court of the State of California, in its opinion, decision, determination and judgment in the case of the People of the State of California v. this appellant, erred in holding that appellant was not denied due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, when he was deprived of the right of his counsel at any interrogation conducted of him; when he asked to have his counsel present, and without his consent he was removed from the jail without his attorney's having been sent for or being present and subjected to prolonged and constant questioning, and when statements thus purportedly obtained were permitted to be used in evidence against him.

The Supreme Court of the State of California erred in holding that such proceedings did not violate due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and did not vitiate the verdict.

IX

The Supreme Court of the State of California, in its opinion, decision, determination and judgment in the case of the People of the State of California v. this appellant, erred in holding that the right of appellant to the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States was not vio- [fol. 47] lated when he was deprived of the right of his counsel at any interrogation conducted of him, although, to the then knowledge of the District Attorney, he had retained counsel; when he asked to have his counsel present, and without his consent he was removed from the jail, and without his attorney's having been sent for or being present he was subjected to prolonged and constant questioning, and when statements thus obtained in order to terminate the questioning were permitted to be used in evidence against him.

The Supreme Court of the State of California erred in holding that such proceedings did not deprive appellant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and did not vitiate the verdict.

X

The Supreme Court of the State of California, in its opinion, decision, determination and judgment in the case of the People of the State of California v. this appellant, erred in holding that appellant was not deprived of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and in holding that the conviction, sentence and judgment pronounced herein is not void when said conviction was based principally upon the testimony of an alleged accomplice named Charles H. Hope, without whose testimony such conviction could not have occurred, and in refusing to consider the affidavits of said [fol. 48] Charles H. Hope made since the trial of said cause and filed with the Supreme Court of the State of California in connection with these proceedings, in which said Hope swears that his testimony was obtained by fraud, collusion and coercion and was entirely false, and that he was impelled only by force, fear, threats and promises to give such testimony, and that all of these facts, including the falsity of his statements, were known to the prosecution and par-

ticipated in by them; and the Supreme Court of the State of California erred in holding that said testimony thus obtained, and the conviction based thereon, did not make the trial had therein a mere pretense and sham, and was not a violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Supreme Court of the State of California further erred in holding that a prosecution and conviction based upon testimony induced by threats that said Hope would be framed unless he gave such testimony, and by coercive treatment on the part of the prosecutor and members of his official investigating staff, and by promises of leniency to said Hope and favors to his family made by the District Attorney and his deputies, when said Hope avers by affidavits filed with the California Supreme Court in these proceedings, which affidavits were not contradicted, controverted or traversed in any manner, that such testimony was entirely false and such falsity was known to the District Attorney and his deputies when given by said Hope, did not violate due process of law guaranteed by the Fourteenth [fol. 49] Amendment to the Constitution of the United States.

XI

The Supreme Court of the State of California, in its opinion, decision, determination and judgment in the case of the People of the State of California v. this appellant, erred in holding that the right of appellant to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States was not violated, and in holding that the conviction sentence and judgment herein pronounced is not void, when said conviction was based principally upon the testimony of an alleged accomplice named Charles H. Hope, without whose testimony such conviction could not have occurred, and in refusing to consider the affidavits of said Charles H. Hope, made since the trial of said cause and uncontradicted and not traversed in any manner, in which said Hope swears that his testimony was obtained by fraud, collusion and coercion and was entirely false, and that he was impelled only by force, fear, threats and promises to give such testimony, and that all of these facts, including the falsity of his statements, were known to the prosecution and participated in

by them: and the Supreme Court of the State of California erred in holding that said testimony thus obtained, and the conviction based thereon, did not make the trial had therein a mere pretense and sham and did not deprive appellant of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the [fol. 50] United States.

The Supreme Court of the State of California further erred in holding that a prosecution and conviction based upon testimony induced by threats that said Hope would be framed unless he gave such testimony, and by coercive treatment on the part of the prosecutor and members of his official investigating staff, and by promises of leniency to said Hope and favors to his family made by the District Attorney and his deputies, when such testimony was entirely false and such falsity was known to the District Attorney and his deputies, did not deprive appellant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XI

The Supreme Court of the State of California, in its opinion, decision, determination and judgment in the case of the People of the State of California v. this appellant, erred in holding that each and all of the above acts did not and do not constitute a denial to appellant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and did not and do not deprive appellant of due process of law as guaranteed by said Fourteenth Amendment to the Constitution of the United States.

For which errors the appellant prays that the said judg- [fol. 51] ment of the Supreme Court of the State of California dated November 9th, 1939, denying appellant's Petition for Writ of Habeas Corpus in the above-entitled cause, be reversed, and a judgment rendered in favor of the said appellant and for costs.

Major Raymond Lisenba.

[fol. 52] In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal—Filed January 18, 1940

The appellant, Major Raymond Lisenba, having prayed for an allowance of the appeal in this cause to the Supreme Court of the United States and from the judgment and order denying petitioner a writ of habeas corpus in the above-entitled cause in the Supreme Court of the State of California on the 9th day of November, 1939, and from each and every part thereof, and having presented and filed his petition for appeal, assignment of errors and prayer for reversal and statement of jurisdiction, pursuant to the statutes and rules in the Supreme Court of the United States in such cases made and provided;

It Is Now Ordered that an appeal be and the same is hereby allowed from the Supreme Court of the State of California to the Supreme Court of the United States in the above-entitled cause, as provided by law, and

It is further ordered that the Clerk of the Supreme Court of the State of California have prepared and certified a [fol. 53] transcript of the record, proceedings and judgment and order in this cause, and transmit the same to the Supreme Court of the United States so that the clerk of said court shall have the same within sixty days from this date, and

It is further ordered that the affidavit for leave to proceed in forma pauperis be filed in lieu of bond for costs on appeal.

Dated: This 18th day of January, 1940.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fols. 54-59] In Supreme Court of the United States

[Title omitted]

Order Staying Execution—Filed January 18, 1940

An order having been duly given and made by this Court allowing the appeal of the defendant, Major Raymond Lisenba, from this Court to the Supreme Court of the United

States, and an application having been made on behalf of said appellant for a stay of execution, and good cause appearing therefor,

It Is Hereby Ordered that the execution of the judgment be stayed until such time as the above pending appeal is finally determined.

Dated: January 18th, 1940.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 60] [File endorsement omitted.]

[fol. 61] IN SUPREME COURT OF THE UNITED STATES AND IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 18, 1940

The above-named Major Raymond Lisenba, appellant herein, having prayed for the allowance of an appeal in the above-entitled case to the Supreme Court of the United States at Washington, D. C., on the 18th day of January, 1940, and having made and filed a proper petition for appeal with assignment of errors and prayer for reversal, and the necessary jurisdictional statements pursuant to the statutes and rules of the Supreme Court of the United States;

It is now hereby and herein ordered that an appeal be and the same is hereby allowed in the above-entitled case to the Supreme Court of the United States from the Supreme Court of the State of California, as provided by law; and

It is further ordered that the clerk of the Supreme Court of the State of California shall prepare and certify to a complete transcript of the entire record and proceedings including all evidence and the judgment in this case, and [fol. 62] transmit the same to the Supreme Court of the United States at Washington, D. C., so that the said Su-

preme Court of the United States and the clerk thereof shall have same within sixty days from this date.

Dated: January 18th, 1940.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 63] [File endorsement omitted.]

[fol. 64] IN SUPREME COURT OF THE UNITED STATES AND IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

CERTIFICATE OF THE CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA—Filed January 18, 1940

This is to certify that a Petition for Writ of Habeas Corpus was filed in the Supreme Court of the State of California on October 31st, 1939, on behalf of Major Raymond Lisenba, also known as Robert S. James; that the said Petitioner is the same Major Raymond Lisenba, also known as Robert S. James, who is the appellant vs. The People of the State of California, appellee, in the appeal taken and allowed from the judgment of this Court in the case of The People of the State of California vs. Major Raymond Lisenba, also known as Robert S. James.

The Petition for Writ of Habeas Corpus was based upon all the records, files and proceedings in the trial and subsequent to the trial in the case of the People of the State of California vs. Major Raymond Lisenba, also known as Robert S. James, and upon certified copies of two affidavits of Charles H. Hope, the originals of which were filed in the Superior Court and the certified copies of which were filed in this Court in said cases since the judgment of conviction and sentence imposed therein. The Petition for Writ of [fol. 65] Habeas Corpus was considered upon all records, files and proceedings in the trial and subsequent to the trial in said cases.

This is further to certify that the said Petition for Writ of Habeas Corpus set forth as grounds for the granting of the same that the petitioner is under judgment of death in violation of the Constitution and laws of the United States,

to-wit, the Fourteenth Amendment to the Constitution of the United States, in this:

1. That the bringing of live, hissing rattlesnakes into the court room during the trial and exhibiting them and exposing them to the jury was so inflam-atory and frightening in its nature as to make of the trial based upon the murder of the deceased, Mary Emma James, by drowning, a mock and a sham, and violated the fundamental guarantee of due process of law contained in the Fourteenth Amendment to the Constitution of the United States;

2. That brutal, third degree methods were used upon the defendant Lisenba to coerce and extort a purported confession, and that the use in evidence of such alleged confession obtained by such means and methods makes void the entire trial under the due process clause of the Fourteenth Amendment to the Constitution of the United States;

3. That prolonged questioning without sleep and under a tortuous mental ordeal similar to that employed in the dark ages and in the torture chamber, were used upon defendant, and statements thus extorted and coerced were used in [fol. 66] evidence at the trial; that the use of the alleged confession thus obtained by these methods, in evidence, makes void the entire trial under the due process clause of the Fourteenth Amendment to the Constitution of the United States;

4. That alleged evidence of another purported offense in another state, to-wit, Colorado, was presented in the trial of this case without any indictment, information or judgment thereon, and without any jurisdiction of the California courts of the subject-matter therein, and without the existence of any processes of the California courts to reach any witnesses in Colorado, and that said use of said testimony placed the defendant upon trial in California by a California jury on such purported offense, and was and is in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States;

5. That Major Raymond Lisenba was unlawfully imprisoned and isolated in a private building for three days and nights before being lodged in jail: that he was then held practically incommunicado for eleven days and almost incessantly questioned by officers until the alleged confession

was given, and that the use of said alleged confession as evidence in the trial was in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States;

6. That the repeated taking of defendant from jail without his attorney and against his consent, to the District [fol. 67] Attorney's office and other places, after prolonged questioning without food and without rest, and thereafter extorting a purported confession which was never repeated before or since, and which was claimed to have been taken by a deputy sheriff in the presence of the District Attorney and in the absence of defendant's counsel, and the use thereof as evidence in this case against appellant, was in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States;

7. That said Major Raymond Lisenba was deprived of the right of counsel during these stages of the proceedings and was denied the request that his counsel be present; that Petitioner was denied the right of consultation with, or the presence of an attorney during all of the period subsequent to his kidnaping by peace officers and while he was incarcerated in a private home and thereafter in jail, and during the continuous questioning to which he was subjected, and in particular on the occasion when said alleged confession was extorted from him, as aforesaid, although petitioner repeatedly asked to be permitted to have counsel present;

8. That the principal evidence against the defendant was that of an alleged accomplice named Charles H. Hope; that since the trial of appellant the said Hope has made affidavits and filed the same in the Superior Court of Los Angeles County and certified copies of the same have been filed in the Supreme Court of California and considered by this [fol. 68] Court in connection with this petition, stating that said Hope's testimony was obtained by deceit, fraud, collusion and coercion, and was entirely false, and that he was impelled by force and fear, threats and promises, to testify as he did, and that all these facts, including the falsity of his statements, were known to the prosecution and participated in by them, which said affidavits of said Hope, and statements therein contained, were undisputed and not traversed in any manner; that testimony thus obtained and a conviction based thereon, makes a trial a mere pretense and

is in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

9. That each and all of these things violated appellant's right of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

That on November 9th, 1939, the Supreme Court of California entertained the petition and considered each of the contentions made upon each of the grounds specifically set forth, and duly and regularly and explicitly overruled each and every one of the contentions made by the appellant Major Raymond Lisenba, that his rights of due process of law and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States were infringed, and the denial of appellant's petition for hearing [fol. 69] on said writ is to be interpreted and considered as holding against appellant's contentions that his rights under the Fourteenth Amendment to the Constitution of the United States upon each of the grounds set forth were violated.

That on the 18th day of January, 1940, a petition for appeal to the Supreme Court of the United States from the judgment of this Court having been duly and regularly presented, and good cause appearing therefor, the same was allowed.

It is ordered that this certificate be filed in this Court and made a part of the record on appeal to the Supreme Court of the United States.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 70] [File endorsement omitted.]

[fols. 71-100] In Supreme Court of the United States and in the Supreme Court of the State of California

[Title omitted]

Order Staying Mandate—Filed January 18, 1940

To Sheriff Eugene W. Biscailuz:

It appearing to the Court that notice of appeal has been filed in this Court to the Supreme Court of the United States, and good cause appearing therefor,

It Is Hereby Ordered that the mandate in the above-entitled case be stayed to and including the final decision on appeal in the United States Supreme Court and the execution of judgment stayed pending such decisio n on appeal.

Dated: January 18, 1940.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 101] [File endorsement omitted]

[fol. 102] IN SUPREME COURT OF CALIFORNIA AND IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION—Filed May 4, 1940

It is Stipulated by and between the People of the State of California, through Earl Warren, Attorney General, by Warren I. Proud, Deputy Attorney General, and Morris Lavine, attorney for Major Raymond Lisenba, that the record in the case of Major Raymond Lisenba, also known as Robert S. James, vs. The People of the State of California, on appeal from the judgment of the Supreme Court of California to the Supreme Court of the United States, shall also be considered the record on appeal in the matter of Major Raymond Lisenba, also known as Robert S. James, for a Writ of Habeas Corpus, for which an appeal was allowed to the Supreme Court of the United States, and that the records in the case of Major Raymond Lisenba, also known as Robert S. James, vs. The People of the State of California on an appeal from the judgment, and all exhibits, [fols. 103-108] files and documents in that case may be deemed to be a part of the record in the habeas corpus proceedings by reference.

Attorney General Earl Warren, by Warren I. Proud, Deputy, Attorney for Appellee. Morris Lavine, Attorney for Appellant.

[fol. 109] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PORTIONS OF THE RECORD TO BE PRINTED—Filed June 22, 1940

[Stamp:] Received copy of within document, Jun. 20, 1940. Earl Warren, Attorney General by Frank Richards, Deputy.

[fol. 109a] To the Honorable Supreme Court of the United States:

In compliance with paragraph 9 of Rule 13, Rules of the United States Supreme Court, appellant intends to rely upon the following points and grounds:

I

That third degree brutal methods were used upon the petitioner to coerce and extort a purported confession which was used in evidence against him, and that such use of such alleged confession obtained by such means and methods make void the entire trial under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

II

That third degree brutal methods used upon petitioner to coerce and extort a purported confession from him and the use thereof in the trial denied to petitioner the equal [fol. 109b] protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

III

That prolonged questioning without sleep and under tortuous mental ordeal, similar to that employed in the dark ages, and in the torture chamber, were used upon the petitioner and statements thus extorted and coerced were permitted in evidence in the trial. That the use of such alleged confession in evidence obtained by these methods was in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

IV

That prolonged questioning without sleep and under tortuous mental ordeal, similar to that employed in the dark ages, and in the torture chamber, were used upon the petitioner and statements thus extorted and coerced and used against petitioner in his trial denied petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

V

That Major Raymond L enba was unlawfully imprisoned and isolated in a private uilding for three nights and days, before being lodged in any jail; that he was then held practically incommunicado for eleven days, and almost inces-
[fol. 109c] santly questioned by officers until the alleged confession was given, and that the use thereof in evidence in the trial was in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

VI

That Major Raymond Lisenba was unlawfully imprisoned and isolated in a private building for three nights and days, before being lodged in any jail; that he was then held practically incommunicado for eleven days, and almost incessantly questioned by officers until the alleged confession was given, and that the use thereof in evidence in the trial denied petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

VII

That the repeated taking of defendant Lisenba from jail without his attorney and against his consent and to the office of the district attorney and other places and after prolonged questioning without food and without rest, and thereafter extorting a purported confession which was used in the case against appellant, was in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 109d] VIII

That the repeated taking of defendant Lisenba from jail without his attorney and against his consent and to the

office of the district attorney and other places and after prolonged questioning without food and without rest, and thereafter extorting a purported confession which was used in the case against appellant, denied petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

IX

That the principal evidence against the defendant was that of an alleged accomplice named Charles H. Hope. That since the trial the said Charles H. Hope has made affidavits and filed the same in the Superior Court of Los Angeles County, stating that his testimony was obtained by deceit, fraud, collusion and coercion and was entirely false; that he was impelled by force and fear, threats and promises and that all these facts, including the falsity of his statements, were known to the prosecution and participated in by them. That testimony thus obtained and the conviction based thereon make a trial a mere pretense and are all in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 109e]

X

That the principal evidence against the defendant was that of an alleged accomplice named Charles H. Hope. That since the trial the said Charles H. Hope has made affidavits and filed the same in the Superior Court of Los Angeles County, stating that his testimony was obtained by deceit, fraud, collusion and coercion and was entirely false; that he was impelled by force and fear, threats and promises and that all these facts, including the falsity of his statements, were known to the prosecution and participated in by them. That testimony thus obtained and the conviction based thereon make a trial a mere pretense and denied to the petitioner the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XI

That the bringing of live, hissing rattlesnakes into a courtroom and exhibiting them to a jury was so inflammatory and frightening in its nature as to make of the trial a mock and sham and violate the fundamental guarantee of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

XII

That the bringing of live, hissing rattlesnakes into a [fol. 109f] courtroom and exhibiting them to a jury was so inflammatory and frightening in its nature as to make of the trial a mock and sham, and denied to the petitioner a fair and impartial trial guaranteed to all citizens of the United States as a part of the guarantee of the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

Appellant designates the following portions of the record to be printed:

Page 1 to page 54, inclusive;
Page 60 to page 72, inclusive;
Page 101 to page 104, inclusive.

Morris Lavine, Attorney for Appellant.

[fol. 109g] [File endorsement omitted.]

[fol. 110] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 28, 1940

Appeal from the Supreme Court of the State of California.

Treating the appeal papers herein from the Supreme Court of the State of California *sa* an application for a writ of certiorari;

On Consideration Whereof, it is ordered by this Court that the said application for writ of certiorari be, and the same is hereby, granted.

And it is Further Ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 44,483, California Supreme Court. Term No. 134. Major Raymond Lisenba, Petitioner, vs. The People of the State of California. Filed June 8, 1940. Term No. 134, O. T. 1940.